Fiscal Law Update

PDI Service Day

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June 2010

MOST IMPORTANTLY:
THE BOX HASN'T CHANGED

PURPOSE

TIME

AMOUNT

Food

"[F]ree food . . . Normally cannot be justified as a 'necessary expense' under an appropriation since such expenses are considered personal expenses that government employees are expected to bear from their own salaries."

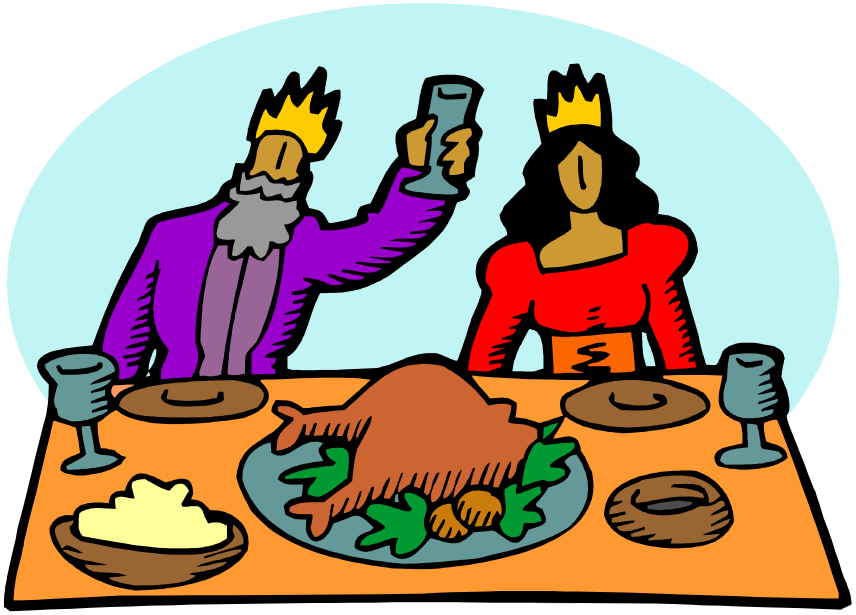
72 Comp. Gen. 178

Forest Service--Light Refreshments for National Trails Day, B-310023, April 17, 2008

…But There Are Exceptions
U.S. Army Garrison Ansbach, B-317423, March 9, 2009

Food may be provided for civilian employees, military members, and nonfederal participants such as contractors and host nation first responders at annual antiterrorism training exercises where necessary to achieve the objectives of the training exercise

That it would be an "embarrassment" not to provide food to host nation first responders is not sufficient justification for using appropriated funds to buy food for nonfederal personnel



Department of the Navy – Lunch for Volunteer Focus Group

B-318499, November 19, 2009

- In general, appropriated funds are not available for personal expenses, such as lunch.
- Whether to provide food for focus group participation must be decided on a case-by-case basis.
- Here, no specific statutory objective identified, so appropriated funds not available.

Contrast with Veterans Benefits Administration – Refreshments for Focus Groups, B-304718, Nov. 9, 2005

Bottled Water

The Rule:
personal expense!

Appropriated funds may be used only upon a showing of necessity; i.e., there is no potable water available.

2 Comp. Gen 776 (1923)
and many other cases!

- B-318588, Sept. 29, 2009

- B-310502, Feb. 4, 2008

Other Personal Expenses

Questions to ask:

- Is there a reasonable relationship between the proposed expenditure and the purpose for which the funds were appropriated?
- What is the benefit to the agency?
- What is the benefit to the individual?
- Is there a more cost effective way to achieve the agency mission or program goals?

The Ever Popular Trinkets

Legitimate only:

As part of an approved Awards program

Items of no intrinsic value designed solely to assist in achieving internal agency management objectives

In rare cases, ok where there is a direct connection between the expenditure and the execution of the agency's mission; benefit to the government must outweigh the personal nature of the item

(Rule of thumb: with the exception of a legitimate award, if it's something actually you'd want, you can't have it.)

Giveaway Items Held Proper

Caps and other items distributed to a local residents in furtherance of threatened eider conservation plan – **US Fish and Wildlife Service, B-318386, 12 August 2009**

Gift cards for respondents to the Converter Box Coupon Program Survey - **National Telecommunications and Information Administration, B-310981, 25 Jan 2008**

Lava rocks distributed by National Park Service at Capulin Mountain National Monument, **B-193769, 24 Jan 1979**

Examples of Improper Giveaway Items

T-shirts with the CFC logo given to employees who contributed a certain amount

Ice scrapers imprinted with the logo “Don’t Drink and Drive”

Novelty plastic garbage cans containing candy in the shape of solid waste, given by EPA to attendees at an exposition

Decorative ashtrays given to conference attendees

Obligations
Definitizing Interagency Orders

Current fiscal year funds are not available for obligation for orders placed this fiscal year that cannot be finalized until the next fiscal year.

Not a valid obligation to the current fiscal year because, until finalized, the order is tentative and incomplete.

Natural Resources Conservation Service – Obligating Orders with GSA's AutoChoice Summer Program B-317249, July 1, 2009

Speaking of GSA . . .

Chemical Safety and Hazard Investigation Board – Interagency Agreement with the General Services Administration, B318425, December 8, 2009

FY appropriations are not available to fund severable services that will be performed in a future fiscal year

Proposed IA that does not specify a period of performance or the services to be provided (exposing the agency to an unknown liability) violates the Anti-Deficiency Act.

Availability of Appropriations: Time
Funding of Severable Services Contracts
Severable Services Contracts, B-317636, April 21, 2009

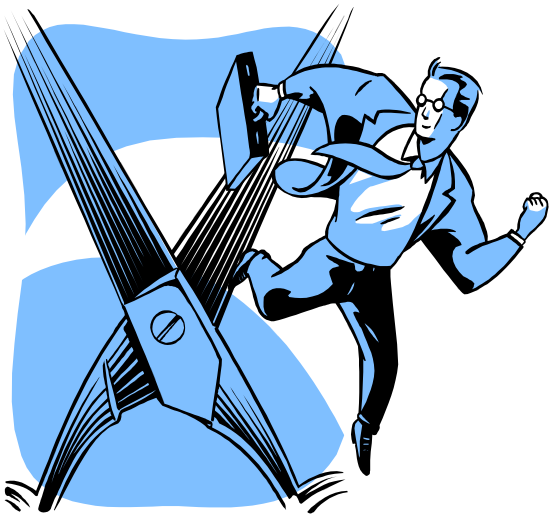
10 USC 2410a authorizes agencies to enter into severable services contracts that begin in one fiscal year and end no more than 12 months later funded with the appropriation current at the time of contract award

- a statutory exception to the *bona fide* needs rule
- only applies to contracts funded with time limited appropriations

An agency using a multiple year appropriation would not violate the *bona fide* needs rule if it enters into a several services contract for more than one year so long as the period of performance does not exceed the period of availability of the appropriation

Bona fide needs rule not an issue with no-year funds

Nonseverable Services Contracts



A nonseverable services contract that is not separated for performance by fiscal years may not be funded on an incremental basis without statutory authority.

Failure to obligate the estimated cost of a nonseverable cost reimbursement contract at time of award violates the *bona fide* needs rule.

Financial Crimes Enforcement Network – Obligations under a Cost-Reimbursement, Nonseverable Services Contract, B-317139, June 1, 2009

Surface Water Management Fee

- GAO concluded the Forest Service, as an agency of the U.S. Government, was constitutionally immune from paying a "surface water management fee" assessed by a local state government because it was really a tax not a fee.

Forest Service—Surface Water Management Fees,

B-30666, June 5, 2006.

Grassroots Lobbying…

- The use of appropriated funds to create and operate the HealthReform.gov Web site and the State your Support Web page did not violate the prohibitions on grassroots lobbying or publicity or propaganda.
- The Web site and Web page did not constitute grassroots lobbying because they contained no clear, direct appeal to the public to contact Members of Congress in support of or in opposition to health care reform.
- They also did not violate the publicity or propaganda prohibition because nothing within the Web site or Web page constituted communications that are purely partisan, self-aggrandizement, or covert.

Legislative History

- Election Assistance Commission (EAC) violated the purpose statute, 31 U.S.C. 1301(a), when it obligated certain grant programs to its fiscal year 2004 requirements payments appropriation.
- EAC used its requirements payments appropriation because of language in a conference report and OMB apportionment.
- The plain language of the appropriation, however, was clear that the appropriation was legally available only for requirements payments.

Election Assistance Commission--Obligation of Fiscal Year 2004 Requirements Payments Appropriation, B-318831, April 28, 2010

Earmarks

The designation of a part of a lump sum appropriation for a particular purpose

Generally, must be in the statute itself to be binding

Limitations on legislative history

can illuminate

cannot provide that which is not there

Exception for Dollar Amounts contained in “Explanation of Project Level Adjustments” Tables Published in “Explanatory Statement” for FY 10 Approp. Act.

DoD memo dtd 13 Feb 10

FMB memo dtd 7May 10

The Anti-Deficiency Act

- Continues to be a significant focus area for DoD.
- Possible changes…